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**MINORITY MEDIA AND  
TELECOMMUNICATIONS COUNCIL**

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November 1, 2002

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Hon. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

Dear Ms. Dortch:

RE: MB Docket No. 02-277 (Biennial Review of Broadcast  
Ownership Rules

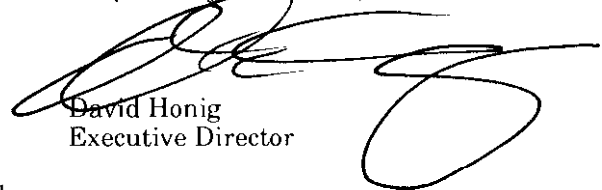
MM Docket No. 01-235 (Broadcast/Newspaper Crossownership)

MM Docket No. 01-317 (Local Radio Ownership)

MM Docket No. 00-240 (Definition of Radio Markets)

Pursuant to 47 CFR \$1.1206, I am providing three copies of a document entitled "Background Materials: Omnibus Media Ownership Proceeding Stakeholders Meeting" that is dated November 6, 2002. Prepublication copies are being distributed today to the commissioners and to the commission staff members listed in the "cc" below.

Respectfully submitted,



David Honig  
Executive Director

cc: Hon. Michael Powell  
Hon. Kathleen Abernathy  
Hon. Michael Copps  
Hon. Kevin Martin  
Susan Eid, Esq.  
Alexis Johns, Esq.  
Michele Ellison, Esq.  
Paul Gallant, Esq.  
Carolyn Fleming Williams, Esq.

/dh

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## BACKGROUND MATERIALS:

### OMNIBUS MEDIA OWNERSHIP PROCEEDING STAKEHOLDERS MEETING

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MB Docket No. 02-277 (Biennial Review of  
Broadcast Ownership Rules) et al.

U.S. Department of Commerce  
1400 Constitution Ave. N.W.  
Room 6800

November 6, 2002  
8:30 - 4:00 PM

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Assistance provided by the National Telecommunications and Information Administration, and its Minority Telecommunications Development Program (MTDP) made this gathering possible. The Minority Media and Telecommunications Council also acknowledges and appreciates the cooperation and advice received from commissioners and staff members of the Federal Communications Commission.

**BACKGROUND MATERIALS:  
OMNIBUS MEDIA OWNERSHIP PROCEEDING  
STAKEHOLDERS MEETING**

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TAB 1

## **AGENDA OF THE STAKEHOLDERS MEETING**

- 8:30-9:00 Registration/breakfast
- 9:00-9:15 Greetings: Maureen Lewis, Esq., Director, Minority Telecommunications Development Program, National Telecommunications and Information Administration
- 9:15 - 9:45 Are there areas of general agreement, such that the scope of comments might be narrowed or focused?
- 9:45 - 10:00 Remarks: Hon. Nancy Victory, Assistant Secretary of Commerce and Director, National Telecommunications and Information Administration
- 10:00- 11:30 Understanding the research studies already in the record: Discussion with Paul Gallant, Esq., Special Advisor, Media Ownership Working Group, FCC Media Bureau
- 11:30 - 12:15 What additional research should be performed to build a complete record?
- 12:15 - 1:15 Lunch (Commerce Department Cafeteria)
- 1:15 - 2:00 Can additional research be performed by stakeholders pooling their resources?
- 2:00 - 3:45 Can regulations, or voluntary steps, be designed to foster minority ownership? Discussion led by James Winston, Esq., Executive Director, National Association of Black Owned Broadcasters
- 3:45 - 4:00 Next steps

\* \* \* \* \*

## TAB 2

**he-registrants (participants and observers) as of  
October 30, 2002 [excludes government officials]**

| <b><u>Name</u></b> | <b><u>Affiliation</u></b>                | <b><u>E-Mail</u></b>              |
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## TAB 3





# NEWS

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D. C. 20554

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

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FOR IMMEDIATE RELEASE  
September 12, 2002

NEWS MEDIA CONTACTS:  
Michelle Russo 202-418-2358  
Robin Pence 202-418-0505

## FCC INITIATES THIRD BIENNIAL REVIEW OF BROADCAST OWNERSHIP RULES Cites Goal *of* Updating Rules *to Reflect* Modern Marketplace

Washington, D.C. - Today, the Federal Communications Commission (FCC) initiated the third Biennial Regulatory Review of Broadcast Ownership Rules. In the 1996 Telecommunications Act, Congress mandated that the FCC review its media ownership rules to determine "whether any of such rules are necessary in the public interest as a result of competition." Today's action marks the beginning of the most comprehensive look at media ownership regulation ever undertaken by the FCC. The FCC said the objective of this proceeding is to develop ownership rules and policies that are reflective of the current media marketplace, are based on empirical evidence, and are analytically consistent.

In a Notice of Proposed Rulemaking (NPRM) adopted today, the FCC affirmed its traditional goals of promoting diversity, localism, and competition in the local media market. The item explores the following questions:

- (1) Does the marketplace provide a sufficient level of competition to protect and advance these policy goals?
- (2) If not, do the current ownership rules achieve these goals?
- (3) Are revisions to the rules required to protect and advance diversity, competition and localism in the media market?

The NPRM addresses all of the media ownership rules related to use of the broadcast spectrum, many of which were originally adopted decades ago. Two of these six rules are subject to rulemakings already in progress so their records will be combined into this proceeding; and two other rules have been remanded to the FCC by the U.S. Court of Appeals for the District of Columbia. The six rules and the year they originally were adopted are:

- Newspaper/Broadcast Cross-Ownership Prohibition **(1975)**: NPRM in progress (MM 01-235)
- Local Radio Ownership **(1941)**: NPRM in progress (MM 00-244)
- National **TV** Ownership **(1941)**: remanded by D.C. Circuit
- Local TV Multiple Ownership **(1964)**: remanded by D.C. Circuit
- Radio/TV Cross-Ownership Restriction **(1970)**
- Dual Television Network Rule **(1946)**

Recent court decisions reversing FCC ownership rules emphasized that any limits must be based on a solid factual record, not on predictive judgments alone. With respect to the National TV Ownership rule, the court stated, "Although we agree with the Commission that protecting diversity is a permissible policy, the Commission did not provide an adequate basis for believing the rule would in fact further that cause" (Fox *Television Stations, Inc. v. FCC*, 2002).

Marking the first effort of its kind, the FCC has commissioned a number of empirical studies examining the current state of the media marketplace, including how consumers use the media, how advertisers view the different media outlets, and how media ownership affects diversity, localism and competition. The results of these studies will **be** released in the coming weeks. **Parties** filing comments in response to today's NPRM will have a full opportunity to review these studies before filing comments.

Today's NPRM does not reach any tentative conclusions because the item's objective is to gather data that will build the foundation for media ownership regulation. **The** FCC said that parties who file comments should provide empirical evidence supporting their assertions.

The FCC said evaluating the rules together will create a comprehensive and consistent analytical framework that will avoid future criticism by the courts. Most recently, the D.C. Circuit, in reviewing the FCC's local television ownership rule, stated, "**The** deficiency of the Commission's explanation is underscored by the explanation it failed to give for defining 'voices' differently in **the** cross-ownership and local ownership rules" (*Sinclair Broadcast Group, Inc. v. FCC*, 2002).

Finally, the **NPRM** invites comment on the standard for the Biennial Review. Does the 1996 Telecommunications Act require the FCC to repeal a rule unless it finds it to be "necessary," meaning "indispensable," **or** can the FCC retain a **rule** if it merely **serves** the public interest? This question **was left** unresolved by the U.S. Court of Appeals for the District of Columbia in *Fox Television Stations, Inc. v. FCC* (2002).

-FCC-

Comments due: 60 days after release of **the** studies  
Reply Comments due: **30** days after the initial comment deadline

MB Docket 02-277

Action by the Commission, September 12, 2002, by Notice of Proposed Rulemaking (FCC 02-249). Chairman Powell and Commissioner Abemathy, with Commissioner Copps concurring and issuing a statement and Commissioner Martin approving in part, concurring in part and issuing a statement.

Media Bureau contacts: Paul Gallant, Debra Sabourin at 202-418-7200.

News about the Federal Communications Commission can also be found  
on the Commission's web site [www.fcc.gov](http://www.fcc.gov).

## CONCURRING STATEMENT OF COMMISSIONER MICHAEL J. COPPS

*In the matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-XXX*  
*Cross-Ownership of Broadcast Stations and Newspapers, MB Docket No. 01-235*  
*Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, MB Docket No. 01-317*  
*Definition of Radio Markets, MB Docket No. 00-244*

Let me begin by saying that I don't know of any issue before the Commission that is more fraught with serious consequences for the American people than the media ownership rules. There is the potential in the ultimate disposition of this issue to remake our entire media landscape, for better or for worse. At stake is how radio and television are going to look in the next generation and beyond. At stake are old and honored values of localism, diversity, competition, and the multiplicity of voices and choices that undergirds our American democracy. At stake is equal opportunity writ large – the opportunity to hear and be heard; the opportunity to nourish the diversity that makes this country great and which will determine its future; the opportunity for jobs and careers in our media industries; and the opportunity to make this country as open and diverse and creative as it can possibly be.

The Nineties brought new rules permitting increased consolidation in the broadcasting industry, on the premise that broadcasters needed more flexibility in order to compete effectively. These rules paved the way for tremendous consolidation in the industry – going far beyond, I think, what anyone expected at the time. These changes created efficiencies that allowed some media companies to operate more profitably and on a scale unimaginable just a few years ago. They may even have kept some companies in business, allowing stations to remain on the air when they otherwise might have gone dark. But they also raise profound questions of public policy. How far should such combinations be allowed to go? What is their impact on localism, diversity and the availability of choices to consumers? Does consolidation always, generally or only occasionally serve the interests of the citizenry? How do we judge these things?

Answering these and many other questions requires more than just personal impressions or philosophical ideas about government regulation or deregulation. Among other things, it demands detailed information on current realities in specific media markets, and far-ranging economic and market structure surveys. It also compels a look at consumer consumption habits. I commend Chairman Powell for putting together a Media Ownership Task Force to study the many ramifications of this issue. But I would emphasize that it's a lot to study, and doing it right requires significant resources of labor and money and time. I hope the Task Force will have the resources it needs to conduct studies that must be both very broad and very deep. Then I hope we might even consider, as a Commission, holding hearings here and around the country, to speak with Americans and better gauge what the reality of particular media markets is. I don't want to vote on final rules – and I would be reluctant to vote on final rules – unless and until I feel

evidence to support them. Some observers act as though the court has decided to be rid **of** all our rules. They have said nothing **of** the sort.

Because the stakes here are so incredibly high, it **is** far more important that we get this done right than that we get it done quickly. I keep coming back to the high stakes involved in what we are doing. Suppose for a moment that the Commission decides to remove or significantly change current limits on media ownership -- and suppose our decision turns out to be a mistake. How do we put the genie back in the bottle then? No way.

Nevertheless, we are launched now on this fateful journey. Much hangs in the balance. But if we approach these proceedings with an open mind, with receptivity on all sides to hard facts and compelling evidence, and if we reach out, really reach out, to stakeholders all across this land, I believe the Commission can arrive at decisions that will serve the public interest and build our **own** credibility in the process.

comfortable that we have the information and the analysis needed to inform our votes. We need as many stakeholders as we can find to take part in this proceeding. I want to hear more from industry, from labor, from consumers, from academe, from artists and entertainers, from anybody who has a stake in how this is resolved. And I think just about everyone, if he or she stops to think about it, has an interest and a stake.

I also want to emphasize that commenters should not feel they have to limit themselves to the questions posed in this item. The Commission labors under no illusion that we have asked every possible question; indeed, we may have overlooked some that cry out for response, so I urge those who respond to look at every aspect of these issues that you deem relevant to our decision-making process.

I will concur with this Notice both because it fulfills our statutory mandate to review the ownership rules, and because it asks some important questions that should help **us** to determine whether the public interest continues to be served by these rules. However, though I would have preferred to have this Notice be a truly clean slate for our analysis, I have some concerns that the timing and tone of the Notice may be seen **as** prejudging these very important issues. Indeed, some analysts have already concluded that the ownership caps and limits are history. Just yesterday, the Precursor Group issued a release predicting that the result of our review in this proceeding will “likely permit the convergence, vertical integration and consolidation of the media sector,” and that “[o]wnership caps and bars on cross ownership are highly likely to be repealed. . .” At this stage of the process – in the absence of the hard information we need to make informed decisions and in the absence of any finding that our rules no longer serve the public interest – I think such conclusions are, at the very least, premature. They are also dangerous.

Our Media Ownership Working Group is engaged in a number of studies on a variety of media issues related to or affected by the ownership rules. These have not yet been completed. My preference was to move forward with this review of our ownership rules only after those studies are completed. That would have simplified life for our stakeholders and probably saved folks the cost of filing more than one set of comments. However, I believe the decision to link the comment periods for this Notice and the studies mitigates the problem somewhat, and that it will allow commenters to make **use** of the data that the studies produce before they give us their final input.

Congress’ mandated review of our media ownership rules insists that we only eliminate such rules if doing so is in the “public interest.” Some still argue that “public interest” shouldn’t count for much in our ownership reviews, and that this is just about picking a number and letting business build up to the limit. I think this Commission has moved beyond any such narrow approach to the public interest and that none of us embraces the concept that the public interest means anything other than the traditional Commission public interest standard. Thus, under the statute, even after *Fox Television*, we should change our media ownership rules only if real evidence demonstrates that the public interest continues to be served by doing so. And I believe that the courts are still amenable to keeping most of our rules, *if* we provide appropriate justification and

I also would have preferred that this Notice provide more guidance to industries and consumers regarding our direction. For instance, I believe we could have provided more guidance on newspaper/broadcast cross-ownership. Unlike every other one of our major broadcast ownership regulations, the newspaper/broadcast cross-ownership **rule** has not been modified since its adoption in 1970s. Today, newspapers are treated differently from all other forms of business that disperse information (including broadcast television stations, which generally are permitted to combine in large markets). In short, only newspapers remain caught in a 1970s atmosphere.

Almost seven years ago, the Commission expressed its belief that the newspaper/broadcast cross-ownership rule needed to be reviewed, and possibly revised, to reflect marketplace changes since the 1970s. The Commission committed to “commence an appropriate proceeding to obtain a fully informed record in this area and to complete that proceeding expeditiously.” The then-Chairman emphasized that:

there is no reason to wait – especially when there is reason to believe that . . . the newspaper/broadcast cross-ownership rule is right now impairing the future prospects of an important source of education and information: the newspaper industry.)

Unfortunately, despite this rhetoric, the Commission followed that decision not with a rulemaking, but merely with a Notice of Inquiry into the waiver policy for newspaper/radio combinations. And the Commission has never completed this proceeding.

In its 1998 biennial report, the Commission again concluded that the newspaper/broadcast cross-ownership rule should be modified “We recognize that there may be situations in which the rule may not be necessary to protect the public interest in diversity and competition.” Again the Commission promised to initiate a rulemaking proceeding to begin this process.

For a third time in the 2000 biennial report, the Commission again committed, this time:

in the near future, [to] issue a notice of proposed rulemaking seeking comment on whether we need to modify the daily newspaper/broadcast cross-ownership rule in order to address contemporary market conditions.<sup>5</sup>

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<sup>2</sup> *Capital Cities/ABC, Inc., Memorandum Opinion & Order*, 11 FCC Rcd 5841, ¶87 (1996)

<sup>3</sup> *Id.* at Separate Statement of Chairman Reed E. Hundt.

<sup>4</sup> 1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35, *Report*, 15 FCC Rcd 11058,795 (2000).

<sup>5</sup> 2000 Biennial Regulatory Review, CC Docket No. 00-175, *Report*, 16 FCC Rcd 1207,732 (2001).

**SEPARATE STATEMENT OF COMMISSIONER KEVIN J. MARTIN  
APPROVING IN PART, CONCURRING IN PART**

Re: **2002** Biennial Regulatory Review – Review ~~of~~ the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 ~~of~~ the Telecommunications Act ~~of 1996~~, *MB Docket No. 02-\_\_* (adopted *Sept. 12, 2002*).

Today we begin the 2002 Biennial Review of our broadcast ownership regulations. I support this Notice, and commend the Chairman for his strong leadership in this area. With this action today, we begin the most comprehensive review of our broadcast ownership regulations that I believe the Commission has ever conducted. We will examine the goals our rules are intended to achieve, the current marketplace in which they operate, and – pursuant to our statutory mandate – the extent to which each rule continues to be “necessary in the public interest as the result **of** competition.” We also consider whether a different regulatory framework might better serve the Commission’s policy goals in today’s marketplace. While this task will be challenging, I **am** hopeful that we will end this process with a clear, reasoned and justified approach to ownership restrictions that will withstand judicial scrutiny.

I think it is important to note that the media landscape has changed dramatically since our ownership rules were adopted. These rules are, frankly speaking, old. ~~Our~~ long-standing goals of competition, diversity, and localism, however, do not lose their importance with age. These goals remain critical. But the import **of** these goals does not relieve us of our statutory obligation to review our rules. We therefore embark on this biennial review to ensure that whatever ownership rules we retain **or** adopt, they fulfill these goals in a manner that reflects the current marketplace.

I write separately to express a few concerns. First, I am troubled by the Notice’s articulation **of** the legal standard inherent in Section 202(h) of the Telecommunications Act of 1996 (the basis for this biennial review). That provision instructs the Commission to review its broadcast ownership rules every two years to determine whether they are “necessary in the public interest as the result of competition,” and to “repeal or modify any regulation it determines to be **no** longer in the public interest.” This Notice “invite[s] comment” **on** the standard the Commission should apply in determining whether to modify, repeal, or retain our rules pursuant to this provision. Yet, the Notice also notes that the “Commission” already articulated an interpretation of this standard before the D.C. Circuit, arguing in its rehearing petition in *Fox Television* that “necessary in the public interest” in §202(h) means merely “useful” or “appropriate.” As I have said previously, I disagree with this interpretation. I believe interpreting “necessary in the public interest” as meaning merely “in the public interest” inappropriately reads the critical word “necessary” out of the statute. Congress included the term, and I believe we must give it more significance. “Necessary in the public interest” must mean more than “useful” or “appropriate.” I believe the term “necessary” should be read in accordance with its plain meaning to mean something closer to “essential.” Accordingly, I concur in the Notice’s discussion of the legal standard of Section 202(h).

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. **104-104**, 110 Stat. **56** (1996), §202(h)

Thanks to Chairman Powell's leadership, the current Commission finally complied last September, issuing another Notice. We now have a full record on the extent to which the newspaperbroadcast rule should be retained, modified **or** eliminated, and we have had almost a year to review the record. Regardless of what the Commission concludes is the appropriate action to take, the affected parties deserve to be spared further delay in knowing that answer. I believe we could have concluded this proceeding by the end of the year.<sup>6</sup>

In light **of** this history, I would have preferred we go further in explaining **our** direction with regard to the newspaperroadcast rule. For instance, **while** there may be disagreement on what steps the Commission should take in smaller markets, I believe there is less disagreement regarding whether some change might be appropriate in the largest markets. I would have preferred to tentatively conclude that some change was warranted. We also could have provided some form of interim relief, at least until this rulemaking is complete. For example, we could have provided broadcast stations and newspapers the same opportunity to combine that two television stations have in the largest markets, as long as a significant number of independent voices remain in the marketplace.

Accordingly, for the reasons discussed above, I approve in part and concur in part on this Notice.

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<sup>6</sup> Contrary to claims that acting on this one rule would be unfair to other relevant industries, the Commission long ago gave an advantage to other licensees by relaxing their local ownership restrictions. Since 1996, the TV/radio cross-ownership rule was relaxed, the TV duopoly rule was relaxed, the dual network ban was relaxed, the national radio cap was eliminated, the cable/network cross-ownership ban was eliminated, and the local radio caps were increased. **As** a result, the number of radio and television licenses one entity could own in a local market was significantly increased ... as long **as** the entity did not also own a newspaper. Indeed, it is the newspaper industry that has been prejudiced by the Commission's failure to act on the 1998 and 2000 Biennial Review Reports' conclusions that this rule should be reviewed and likely modified. Moreover, I do not believe that addressing the newspaper-broadcast rule separately would prejudice the outcome of this proceeding. Broadcasters and newspapers would still be considered "voices" in a local media marketplace, and the Commission could still regulate ownership of these entities as deemed appropriate in this rulemaking.



**TAB 4**

**Table 1. Local, National, and Cross Ownership Rules  
(1950 - 1999)**

| Year |                  | Local Market   | National Market   | Cross Ownership Rules   |
|------|------------------|--|---|---|
| 1950 | Radio<br>TV      | 1 AM and 1 FM<br>1 TV  | 7 AM and 7 FM<br>7 TV of which only 5 can be VHF  | None  |
| 1970 |                  | Prohibit ownership of radio and TV stations in the same market. Grandfathered existing cross ownership.  | Same as 1950  | Prohibit ownership of radio and TV stations in the same market. Grandfathered existing cross ownership.   |
| 1975 |                  | Same as 1970   | Same as 1970  | Additional prohibition of ownership of TV and newspapers in same market. Grandfathered existing cross ownership.  |
| 1985 | Radio<br>TV      | 1 AM and 1 FM<br><br>1 TV except could add a 2 <sup>nd</sup> if it was a satellite of the first.   | 12 AM and 12 FM; plus 2 additional AM and FM if they are controlled by Minorities or small business.<br><br>12 TV plus 2 TV if they are controlled by minorities or small business. TV Stations may reach no more than 25% of population. UHF receive 50% credit in population determination. | Same as 1975, However, waivers occasionally granted.  |
| 1989 | Radio<br>&<br>TV | Same as 1985.  | Same as 1985.   | The Commission adopted ruling that relaxed previous rulings prohibiting cross ownership of TV and Radio. The FCC adopted a waiver policy permitting many Radio/TV combinations. (for summary See MM Docket No. 91-221, Released Aug. 5, 1999) |
| 1992 | Radio<br>TV      | In markets with 15 or more stations, 2 AM and 2 FM as long as the combined Share of audience is less than 25%. In Markets with less than 15 stations, 3 Stations with no more than 2 as AM or FM as long as it has no more than 50% of market's stations.<br><br>Same as 1985.   | 18 AM and 18 FM; plus a non controlling attributable interest in 3 AM and 3 FM if they are controlled by minorities or small business.<br><br>Same as 1985.   | Same as 1989  |
| 1994 | Radio<br>TV      | Same as 1992<br><br>Same as 1985   | 20 AM and 20 FM plus a non controlling attributable interest in 3 AM and 3 FM if they are controlled by minorities or small business.<br><br>Same as 1985   | Same as 1989  |
| 1996 | Radio            | In markets with 45 or more stations, 8 Stations with no more than 5 in either AM or FM. In markets with 30 - 44 stations: 7 radio with no more than 4 in either service. In markets with 15-29 stations: 6 radio stations with no more than 4 in either service. In markets with fewer than 15 stations: 5 radio stations with no more than 3 in | No limit<br><br><br><br><br><br><br><br><br><br>No limit, as long the stations do not serve   | Same as 1989  |

|    |                 |   |  |
|----|-----------------|---|--|
|    | either service. | more than 35% of the nation's population                  |  |
| TV | Same as 1985    | UHF receive <b>50%</b> credit in population determination |  |

Table 1. Local, National, and Cross Ownership Rules
 continued

| Year |       | Local Market  | National Market  | Cross Ownership Rules  |
|------|-------|---|--|--|
| 1999 | Radio | Same as 1996  | Same as 1996.  | If the market has at least 20 separately owned broadcast, newspaper, cable “voices:” 2 TVs and 6 radio stations or 1 TV and 7 radio stations.  |
|      | TV    | Two TV stations in market if the second outlet is: Financially troubled <sup>17</sup> , not yet built, or is not among the market’s 4 top-rated stations at time of purchase and 8 independently owned TV stations remain. An owner may also control overlapping stations if they are based in different designated market areas. | Same as 1996 but in markets where firms own 2 TV: doesn’t double count towards 35% of nationwide population limit. | If the market has at least 10 separately owned broadcast, newspaper, cable “voices:” 2 TV and 4 radio.<br>1 TV and 1 radio allowed everywhere. TV/Newspaper cross-ownership remain prohibited (for now). |

Source: FCC Rules and case law. After 1950, only policy changes are presented in the table. Where “same” is indicated, the same limits exist as existed in previous periods.

**TAB 5**

## **SUMMARY OF MOST OF THE SIGNIFICANT QUESTIONS ASKED OF COMMENTERS IN THE OMNIBUS MEDIA OWNERSHIP NPRM**

Prepared by the Minority Media  
and Telecommunications Council

October 30, 2002

### **Section 11: Legal Framework for Biennial Ownership Review**

1. What does Section 202(h)'s "necessary in the public interest" standard for retaining a rule mean? NPRM, ¶18.
2. Are media ownership regulations to be reviewed under the rational basis test, or another test, when faced with a First Amendment challenge? NPRM, ¶22.

### **Section 111: The Modern Media Marketplace**

3. Does data showing an increased number of outlets and potential competitors, along with any other useful competitive data, suggest that the current ownership limits are outdated? NPRM, ¶¶24-28.

### **Section IV: Policy Goals**

4. What empirical studies would permit the Commission to quantify benefits and harms with regard to competition and consolidation? NPRM, ¶32.

### **Section IV(A) Policy Goals -- Diversity**

5. Does non-traditional news programming (e.g. magazine shows and talk shows) substantially contribute to viewpoint diversity in the sense that a straightforward news broadcast does? NPRM, ¶33.
6. Should viewpoint diversity continue to be a primary goal of ownership regulation? NPRM, ¶41.
7. Should the Commission continue to use source and outlet diversity as proxies to protect and advance viewpoint diversity, or should each type of diversity be an explicit goal in its own right? NPRM, ¶41.
8. In light of the proliferation of new media outlets, will the marketplace protect and advance diversity without regulatory requirements? NPRM, ¶42.

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9. Are there unique attributes of broadcasting that should lead the Commission to define and measure diversity without reference to other media: and is there empirical data on consumer substitutability among the various media outlets or programs that illuminates the answer to this question? NPRM, ¶42.

10. Has consolidation in local markets led to less or greater diversity? NPRM, ¶43.

11. If the market alone does not adequately protect and advance viewpoint diversity, what is the appropriate regulatory framework for achieving that goal: in particular, should the Commission focus on the number of independent owners? NPRM, ¶44.

12. If the Commission continues to rely on an independent voice test as a measure for ensuring the appropriate level of diversity, what media outlets or programming services should be included in the independent voice test; in particular, should cable and DBS be counted: and are commonly-owned outlets a single "voice" or is each independently programmed entity a "voice"? NPRM, ¶45.

13. What other quantitative or qualitative measures of diversity should the Commission consider, and what tools are available to accurately measure diversity; in particular, is competition a proxy for diversity; and should ratings or other measures of consumer usage figure in measuring diversity? NPRM, ¶46.

14. What is the appropriate geographic area over which to measure diversity: in particular, does the appropriate geographic area differ based on whether the programming is local or national, on whether the medium is radio or television? NPRM, 347.

15. Should the appropriate geographic area for measuring diversity be the same as the relevant geographic market for competition purposes? NPRM, ¶47.

16. Does the level of diversity that the public enjoys vary among different demographic or income groups; in particular, does the existence of a subscription fee reduce the level of diversity that certain demographic or income groups enjoy; and does the fact that 86% of American households pay for television impact this analysis: and how should the Commission factor in any income or demographic disparity in access to diversity in the Commission's diversity analysis? NPRM, ¶48.

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17. Are "behavioral requirements" (e.g., along the lines of Section 315 or PEG access) preferable to structural regulation in promoting one or more kinds of diversity? NPRM, 949.

18. What kind of programs and content contribute to viewpoint diversity? NPRM, ¶49.

19. "In addition to seeking to foster the policy goals discussed above, the Commission has historically used the ownership rules to foster ownership by diverse groups, such as minorities, women and small businesses. In the context of this comprehensive review of our ownership rules, we invite comment on whether we should consider such diverse ownership as a goal in this proceeding. If so, how should we accommodate or seek to foster that goal? In addition, we invite comment as to our legal authority to adopt measures to foster that goal." NPRM, ¶50.

**Section IV(B) Policy Goals -- Competition**

20. How should the Commission define its competition policy goal: in particular, should the Commission specifically analyze the competitive nature of the market, or should the Commission rely on the diversity component of its analysis such that a certain level of diversity would alleviate the Commission's competition concerns? NPRM, ¶52.

21. What has been the effect of the proliferation of new media outlets on the Commission's competition goals: in particular, how should these and other outlets be considered for the purposes of analyzing competition, and are there unique attributes of broadcasting that should lead us to define and measure competition without reference to other media? NPRM, 954.

22. If the market alone does not protect and advance competition, what is the appropriate regulatory framework for achieving that goal: in particular, should the Commission continue to rely on having many independent owners as a means of enhancing competition? NPRM, ¶55.

23. If competition analysis is necessary, what are the relevant product and geographic markets in which TV and radio stations compete -- including the delivered programming market and the advertising market (including non-broadcast media), and the program purchasing market, and the market shares of the participants? NPRM, ¶¶56-64.

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24. What are the benefits and detriments of consolidation to consumers; in particular, are increased efficiencies (leading to stringer stations and improved services to the public) offset by reduced incentives to innovate and improve services to the public? NPRM, ¶56.

25. What is the extent of innovation competition in contemporary delivered programming, broadcast advertising, and program production markets; and in which media markets does price competition seem to predominate over innovation competition? NPRM, ¶67.

26. If innovation competition is pervasive in media markets today, how should the ownership rules be modified to encourage rivalry focused on innovation? NPRM, ¶67.

27. Is innovation a valid policy goal when considering the competitive effects of the ownership rules, and how do the media ownership rules affect incentives to be innovative? NPRM, ¶68.

**Section IV(B) Policy Goals -- Localism**

28. How should "localism" be defined: and should it be related to the ownership limits; in particular, do ownership limits tend to ensure an adequate supply of local information intended to meet local needs and interests; is such news, public affairs, and other programming likely to be available in the current marketplace without ownership limits; to what extent do consumers' access to local news and information on non-broadcast media impact this analysis; how much local news and information is available on a typical cable system and on the Internet, other than news that originates on broadcast stations; would some combination of market mechanisms and ownership limits, rather than one or the other, best promote localism; and are consolidation and efficiency innovations likely to reduce the level of local programming or reduce the amount of programming that is locally produced? NPRM, ¶71.

**Section V(A) : Local TV Multiple Ownership Rule**

29. Does the local TV duopoly rule promote all the various forms of diversity, competition, and localism? NPRM, ¶75.



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30. How could a voice test be applied for a local TV ownership rule; in particular, should the Commission continue to count only independently owned and operated full power commercial and non-commercial TV stations, or should the Commission expand the media included in the definition of a voice to include, e.g., radio, daily newspapers, cable systems, DBS and DARS, the Internet, and perhaps other media, and to what extent do consumers view these other media as sources of local news and information? NPRM, ¶77.

31. What numerical or other limits should the Commission set for the number of voices in order to preserve its competition and diversity goals? NPRM, ¶77.

32. Should any definition of "voices" the Commission adopts for the local TV ownership rule be used in other rules, or is there adequate justification for distinguishing between voices relevant to one rule and those relevant to another? NPRM, ¶77.

33. Do local television stations express viewpoints in local newscasts, and, if so, do these newscasts provide diverse points of view? NPRM, ¶79.

34. What are a station's incentives regarding the expression of a viewpoint, both explicitly through editorializing and implicitly through decisions on whether and how to cover particular events? NPRM, ¶79.

35. It is the Commission's understanding that TV stations have largely abandoned editorials because they fear that viewers who disagree with the viewpoint expressed will temporarily or permanently elect to watch another channel. Is this accurate, and if so, what is the effect of this change? NPRM, ¶79.

36. Do owners of multiple broadcast stations have incentives to provide diverse viewpoints; in particular, are there different economic incentives among stand-alone stations, duopolies, or "tripolies" to produce, in a single newscast, a diversity of viewpoints? NPRM, ¶80.

37. To what extent are station owners or the local news departments responsible for those viewpoints expressed through local newscasts, and if there is no connection between ownership and viewpoint expressed via local news programming, what weight should be accorded that finding in evaluating the local TV ownership rule? NPRM, ¶81.

38. Does common ownership lead to more diverse entertainment, news and public affairs programming? NPRM, ¶82.

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39. Absent a rule, would market forces alone lead to increased program diversity on commonly-owned stations? NPRM, ¶82.

40. Does the increase in program variety contributed by cable and **DBS** suggest that limits on local TV station ownership are no longer needed to promote program diversity in the video market? NPRM, ¶83.

41. Besides cable, do **MMDS** and **DBS**, or the Internet, compete with broadcast television in the national, national spot and local advertising markets; and if so, do the local broadcast ownership rules affect broadcasters' ability to effectively compete? NPRM, ¶84.

42. How should the local geographic media market for delivered programming, for advertising, and for program production be defined? NPRM, ¶85.

43. Which kinds of advertisers (local, national, international) seek which kinds of media (those with local, national or international footprints), and what do these media selection patterns imply as to the need to promote competition in these advertising markets? NPRM, ¶86.

44. What are the relevant competitors to broadcast television in the local advertising market; in particular, has cable consolidation improved cable's ability to compete with broadcasting in this market, and if cable operators do compete with local television in the local advertising market, what metric should be used to count outlets and what maximum level of concentration among these outlets would ensure competition in local television advertising markets? NPRM, ¶87.

45. Do radio stations, daily newspapers or direct mail compete with television in the local advertising market; in particular, how should the local ownership rules account for any partial substitutability of media in the local advertising market? NPRM, ¶88.

46. In light of Americans' television viewing patterns, is "delivered video programming" still a relevant market; and if so, how should the Commission measure market concentration? NPRM, ¶89.

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47. To what extent are VCRs/DVDs, movie theaters, the Internet, audio programming, reading and "virtually any other activity that a large number of people find entertaining" good substitutes for television viewing, and how does this affect the Commission's analysis of the need for a local TV ownership rule or how such a rule should be drawn? NPRM, ¶90.

48. Assuming that the delivered video market is a relevant product market for the Commission's competition analysis, should DBS, wireless cable, SMATV, local exchange carriers, open video systems, Internet video, home video sales and rentals, electric utilities and broadband service providers (in addition to commercial TV, noncommercial TV and cable) be included in the delivered video market? NPRM, ¶91.

49. To what extent, if any, should the Commission's analysis of competition in the market for delivered programming differ from its analysis of viewpoint and program diversity? NPRM, ¶92.

50. Does the increasing number of alternative providers of delivered video programming mitigate the potential for distorting the prices of video programming by providing program producers with additional outlets for their product? NPRM, ¶93.

51. What impact do local TV ownership limits have on innovation in the media marketplace? NPRM, ¶94.

52. Does the local TV ownership rule affect localism; in particular, does the rule affect either the quantity or quality of local news and other programming of local interest produced and aired by local stations; the local selection of news content that is aired? NPRM, ¶95.

53. What impact have TV duopolies and LMAs had on the production of local programming by stations involved in these arrangements? NPRM, ¶95.

54. Are awards "from leading professional organizations and community organizations" a reasonable barometer of news "quality," do these awards tend to be earned systematically more or less often by TV duopolies and/or LMAs? NPRM, ¶96.

55. Does the current local TV ownership rule affect the viability of existing local newscasts and/or potential newscasts, particularly for small stations? NPRM, ¶97.

**Section V(B): Radio/TV Cross-Ownership Rule**

56. Is the radio/TV cross-ownership rule necessary in the public interest as the result of competition; in particular, does it still promote economic competition and diversity, particularly viewpoint diversity, and localism? NPRM, ¶100.

57. In addition to radio and television, should (e.g.) Internet web sites, DBS, cable overbuilds, magazines or weekly newspapers, cable and other video media be included in the voice test? NPRM, ¶102.

58. Is there an alternative to a voice test? NPRM, ¶102.

59. What quantities of local news and public affairs programming are provided by TV-radio combinations and stand-alone TV and radio stations; and what does the answer to this question suggest for the impact of greater crossownership among TV and radio stations on news and public affairs programming? NPRM, ¶103.

60. How substitutable are radio and television advertising, as well as print media and Internet website advertising? NPRM, ¶104.

61. Does the radio/TV crossownership rule promote or inhibit innovation? NPRM, ¶105.

**Section V(C): Alternate Means to Achieve Goals**

62. If the current ownership rules are no longer necessary in the public interest, which alternative is best: (1) case-by-case approach; (2) outlet specific rules; and (3) a single local media ownership rule covering all outlets? NPRM, ¶106.

63. If the Commission establishes a "soft cap" as an alternative to a pure case-by-case approach, what factors should be considered in evaluating above-cap transactions? NPRM, ¶107.

64. If the Commission retains structural rules, should it retain outlet specific rules similar in form to the current rules? NPRM, ¶108.

65. If the Commission retains structural rules, should it adopt a local single media ownership rule that is applicable to all or some media outlets and dependent on the number of independent "voices" in any particular market? NPRM, ¶109.

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66. One option being considered would be to: "(1) maintain same-outlet restrictions (e.g., a limit on the number of commonly-owned radio stations per market), perhaps based on market size, in order to preserve economic competition among those outlets that directly compete with each other; and (2) eliminate the cross-ownership rules based on clear evidence that Americans today rely on a far wider array of media outlets than they did decades ago, when the cross-ownership rules were first adopted. Or, if the evidence supported a finding that certain different types of outlets were particularly important news sources, we might replace the cross-ownership limits with an overall per-market cap on media outlets." Would this type of ownership framework be an appropriate response to a record that showed that the markets for advertising and viewpoint diversity are not coterminous? NPRM, §110.

67. Another approach to setting a single ownership rule would be to focus on promoting viewpoint diversity. Would a rule aimed at promoting viewpoint diversity effectively promote competition in local media markets as well? NPRM, §111.

**Section V(D): "Voice" or Other Test**

68. If the Commission adopts a voice test, what should it include as voices: television stations, cable systems, radio stations, daily newspapers, Internet web sites, DARS, magazines, DBS operators, weekly newspapers, and national newspapers? NPRM, §114.

69. If data show that consumers rely to varying degrees on different types of outlets for news and public affairs, how might the Commission design a test that accords different weights to different outlet types? NPRM, §115.

70. If the Commission pursues a weighted approach to measuring diversity and competition in a given market, how should it quantify the relative contributions of each type of outlet? NPRM, §116.

71. How relevant are current MVPD and Internet penetration levels in considering the contributions of **MVPDs** and the Internet to diversity and competition; in particular, does the fact that these services are provided for a fee support a difference in the treatment of these media, such as a rule that counts only broadcast television and radio? NPRM, §117.

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72. Do the Americans who still consume only broadcast television and radio have any distinguishing features, such as geographic location, income or education? NPRM, 9117.

73. A lack of diversity in the outlets that consumers typically view or listen to does not necessarily imply that consumers have limited access to diverse viewpoints or to multiple sources of news and information. How can the Commission accurately capture the vibrancy and variety of today's media market in a framework that is predictable, adaptable to future marketplace changes, and judicially sustainable? NPRM, 9118.

74. Should the Commission count a cable channel as one voice, or should it count each independent owner as a voice, so that if one entity owned a broadcast station, a cable system and several channels on it, an Internet access service, and a web page in the same area, it would be counted as one voice instead of many? NPRM, ¶¶119-120.

75. What is DBS's contribution to diversity and competition, and is it a voice in any rule that might be adopted? NPRM, ¶121.

76. In light of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"), can DBS fairly be classified as an outlet for the purpose of any new voice test; in particular, does the local programming available on DBS merely reproduce the information obtainable via over-the-air television and cable; and does DBS provide a source of diversity and competition to consumers in rural areas that are not served by local TV stations or cable? NPRM, 9122.

77. If cable and DBS should be counted as voices, how should that be done; e.g., if there are two cable systems, should each be counted as a voice; or is each independently owned source of news and public affairs programming that is made available to cable and DBS subscribers a voice; should the same programming on different MVPDs (or on a broadcast station) count **as** one voice or more; should each independently owned network carried by a cable system or DBS provider count as one voice; and do PEG channels, regional cable offerings carry enough information and viewpoints to count as one or more voices? NPRM, ¶123.

78. Are cable operators and DBS providers able to act as content gatekeepers by choosing which programming is selected to fill the available channel capacity; and should their status as gatekeepers affect whether or how the Commission counts them as voices? NPRM, 9123.

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79. Is the Internet now so widely accessible that it should count as one or more voices; and if so, how many voices? NPRM, ¶124.

**Section VI(A): National TV Ownership Rule**

80. Is the current national TV ownership rule necessary in the public interest as the result of competition; in particular, does it continue to serve its original purposes of promoting competition and viewpoint and programming diversity? NPRM, ¶129.

81. Is the UHF "handicap" still sufficient to justify retention of the UHF discount? NPRM, ¶¶130-131.

82. Is the national TV ownership cap relevant to the goal of promoting viewpoint diversity on a national or local level? NPRM, ¶136.

83. Is there a relationship between the national ownership rule and the dual network rule with regard to viewpoint diversity; in particular, could the Commission "safely repeal the national ownership rule as long as we maintain the dual network rule because the latter renders more likely the preservation of at least four different newscasts in each market?" NPRM, ¶136.

84. Does independent ownership of stations increase diversity of programming by providing outlets for non-network programming; in particular, does the broadcast of non-network programming promote the Commission's goal of source diversity? NPRM, ¶136.

85. Do independently owned, network-affiliated stations offer more diverse programming and/or programming from more diverse sources than affiliated stations that are owned and operated by their network; and are there other factors or policy goals the Commission should consider in determining whether to retain, modify, or eliminate the national TV ownership rule? NPRM, ¶137.

86. How does the national TV ownership rule affect the ability of TV station group owners to compete against other video providers? NPRM, ¶138.

87. Does the national TV ownership rule promote or hinder competition in the program production market; in particular, what are the relevant market participants and what is the likely impact of raising the national cap on program producers? NPRM, ¶140.

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88. Can the effects of the 1996 Telecommunications Act's change in the national ownership cap be separated from the effects of the repeal of the fin-syn and PTAR rules; if so, what are those affects and does the 35% cap continue to be necessary to promote a robust and diverse program production market? NPRM, ¶141.

89. Should the key participants in the national television advertising market be defined more broadly to include broadcast TV networks outside ABC, CBS, NBC and FOX, and to include non-broadcast TV networks (e.g., ESPN, CNN)? NPRM, '3143.

90. To what extent are national spot advertisements and/or syndicated programming fungible with network television advertising from the perspective of advertisers? NPRM, '3144.

91. Could the 35% limit inhibit the participation of a group owner in a particular local TV market and thereby affect competition in that market; in particular, could additional scale economies be realized by group owners without the cap, does the current rule prevent especially skilled management from entering additional local markets, and would limiting the size of group owners nationally have an impact on competition in the local advertising market? NPRM, ¶145.

92. What impact does the national TV ownership rule have on innovation in the media marketplace; in particular, what effect might a relaxed national TV ownership rule have on the ability of a broadcast network to develop innovative programming or services, or to effectuate the transition to digital television? NPRM, ¶146.

93. Does the national TV ownership rule, by preserving a class of affiliates, have the effect of increasing or decreasing the quantity and/or quality of local news and public affairs programming? NPRM, ¶148.

94. Does the national TV ownership rule promote localism by creating economic incentives for non-network station owners regarding the preemption of network-delivered programs with station-selected programming; in particular, what is the allocation of advertising revenues between networks and affiliates on preempted programming; and what economic incentives affect the preemption of network programming by local stations? NPRM, '3149.

95. To what extent can affiliates and/or network-owned stations be expected to preempt network programming when it is not in their economic interest to do so? NPRM, '3150.



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96. Is there evidence that consumers served by network-owned stations have either benefited or been harmed by the lack of a non-network owner as a check on network-provided programming? NPRM, ¶151.

97. Is localism furthered by the national TV ownership rule by preserving a sufficiently large class of network affiliates that collectively can influence network programming decisions? NPRM, ¶152.

98. Does the national TV ownership rule continue to be necessary to preserve affiliate bargaining power regarding preemption; in particular, would increasing the cap shift bargaining power to the networks such that "local" rights would be lost as a practical matter? NPRM, ¶153.

99. Should the Commission compare the quality of local news produced by network owned and operated stations and that of affiliates using ratings as a measure of quality; and are there alternative measures for this comparison? NPRM, ¶154.

100. Should the national ownership rule be evaluated according to the number of homes "passed", or according to the homes actually viewing the stations of a group owner? NPRM, ¶155.

**Section V(B): Dual Network Rule**

101. Did the 2001 relaxation of the dual network rule preclude new networks from developing and affiliating with desirable stations, or give a network too much market power? NPRM, ¶¶156-158.

102. Is the present dual network rule necessary in the public interest as the result of competition: in particular, does it promote diversity, competition, and localism? NPRM, ¶¶159, 164?

103. With respect to Viacom's acquisition of UPN, has the Commission's prediction that program diversity at the national level would not likely be harmed proven correct? NPRM, ¶160.

104. What effect would consolidation between and among the top four networks have on program diversity? NPRM, ¶160.

105. Would increased competition that television stations face from cable networks and other media affect the diversity of programming on all national program networks: and if so, how? NPRM, ¶160.

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106. Should the Commission address the loss of an independent local newscast as a result of a combination of two or more of the four major networks in the dual network rule, in the local TV ownership rule, or in some alternative new rule? NPRM, ¶161.

107. In light of other sources of news and current public affairs, would the loss of the ABC, CBS or NBC nightly newscasts as an independent source of news and current affairs injure the public interest; further, should the fact that the national broadcast networks alone reach virtually all households in the country affect the Commission's analysis, and would a reduction in the number of independently-owned national television networks give the remaining networks undue power and influence, such as during national elections? NPRM, ¶162.

108. How would the combination of two of the top four networks affect the balance of negotiating power between networks and affiliates? NPRM, ¶163.

109. Does the dual network rule promote or retard innovation? NPRM, ¶¶164, 167.

110. If there are potential efficiencies of eliminating the rule for emerging networks, will comparable efficiencies accrue if two or more top four networks were permitted to merge? NPRM, ¶165.

111. What would be the effect of mergers among the four major networks on the program production market? NPRM, ¶166.

112. Does the dual network rule promote localism; further, would combinations among major networks affect the quantity or quality of local news provided by the merged company's owned and operated stations? NPRM, ¶168.

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